Filed 4/19/17 In re S.B. CA1/4

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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| In re S.B., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>S.B.,<br>Defendant and Appellant. | A145488<br><br>(Contra Costa County Super. Ct. No. J1301068) |

## MEMORANDUM OPINION[1]

S.B. (Minor) appeals an order denying his request to expunge his DNA from the state's DNA database.

In 2013, Minor admitted felony grand theft (Pen. Code,[2] § 487, subd. (c)) and misdemeanor battery (§ 242) and was adjudged a ward of the court. He provided a DNA sample pursuant to the DNA and Forensic Identification Database and Data Bank Act of 1988. (§ 295 et seq.; § 296.1.) In 2015, Minor petitioned to have his felony offense reclassified as a misdemeanor pursuant to Proposition 47, the Safe Neighborhood and

[1] We resolve this case by a memorandum opinion pursuant to section 8.1(1), (2), California Standards of Judicial Administration. The factual circumstances underlying this case are known to the parties and are not pertinent to the narrow issues before us on appeal.

[2] All undesignated statutory references are to the Penal Code.

Schools Act, and to have his DNA expunged from the state's DNA database. (§ 295 et seq.; see § 490.2.) The juvenile court granted Minor's request to reduce the felony charge to a misdemeanor but denied his request to remove the DNA sample and expunge the data from the database. Minor contends the juvenile court erred and that it deprived him of his constitutional right to equal protection in denying his request.

Our colleagues in Division One have concluded DNA expungement is not appropriate in circumstances such as these, and we agree. (*In re. J.C.* (2016) 246 Cal.App.4th 1462.) Briefly stated:

Proposition 47, effective November 5, 2014, reduces penalties for certain nonserious and nonviolent property crimes and allows those previously convicted of such crimes to apply for reduced sentences. (*In re J.C., supra*, 246 Cal.App.4th at p. 1469.) Section 1170.18, subdivision (k), added by Proposition 47, provides: "Any felony conviction that is recalled and resentenced under subdivision (b) or designated a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes [except certain restrictions regarding firearms]."

California also requires that DNA samples be collected from all persons convicted of felonies, including juveniles adjudicated under Welfare and Institutions Code section 602 for committing any felony offense. (§§ 295, 296, subd. (a)(1); *In re J.C., supra*, 246 Cal.App.4th at p. 1470.) Under section 299, a person can obtain expungement of his or her DNA records from the databank under certain circumstances, including if a qualifying conviction is reversed and the case dismissed. (§ 299, subd. (b)(2).)

At the time the trial court made its ruling in this case, section 299, subdivision (f) provided, "Notwithstanding any other provision of law, including Sections 17, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide [a DNA sample] if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of a qualifying offense as defined in subdivision (a) of Section 296, . . . or pleads no contest to a qualifying offense as defined in subdivision (a) of Section 296." (See *In re J.C., supra*, 246 Cal.App.4th at pp. 1470-1471.) Our colleagues explained in *In re J.C.* that this provision "has been interpreted to preclude a

defendant from obtaining expungement of his or her DNA record despite the reduction of a felony conviction for a wobbler offense to a misdemeanor." (*Id.* at p. 1471, citing *Coffey v. Superior Court* (2005) 129 Cal.App.4th 809, 820-823.) But in *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1226-1230 (*Alejandro N.*), Division One of the Fourth Appellate District concluded that section 299 did provide a basis for DNA expungement when an offense was redesignated as a misdemeanor under Proposition 47.

In a thorough and well-reasoned decision, our colleagues in *In re J.C.* concluded that *Alejandro N.* was superseded by the Legislature's amendment of section 299, subdivision (f), which followed closely on the heels of the decision in *Alejandro N.* As amended by Assembly Bill No. 1492 (2015-2016 Reg. Sess.) (Bill No. 1492), section 299, subdivision (f) now inserts section "1170.18" among the statutes that do not authorize a judge to relieve a person of the duty to provide a DNA sample. (*In re J.C., supra,* 246 Cal.App.4th at pp. 1469, 1472.) The effect of this amendment was to "prohibit[] the expungement of a defendant's DNA record when his or her felony offense is reduced to a misdemeanor pursuant to section 1170.18." (*Id.* at p. 1475.) The court also held that this amendment merely clarified, rather than changed, existing law, and hence could properly be applied to events that occurred before its effective date. (*Id.* at pp. 1475-1482.) Finally, the court concluded that Bill No. 1492 was not an improper amendment of Proposition 47, both because it clarified, rather than amended, Proposition 47 and because, even if it were treated as an amendment, it was not inconsistent with the intent of Proposition 47. (*Id.* at pp. 1482-1483.) The court thus concluded the trial court there had properly refused the minor's request for expungement. (*Id.* at pp. 1467-1468.)

Our colleagues in Division Three have recently agreed with *In re J.C.*'s reasoning and concluded the juvenile court properly denied a DNA expungement request after reducing a felony to a misdemeanor pursuant to Proposition 47. (*In re C.H.* (2016) 2 Cal.App.5th 1139, 1143-1152, review granted Nov. 16, 2016, S237762; *In re C.B.* (2016) 2 Cal.App.5th 1112, 1117-1128, review granted Nov. 9, 2016, S237801; but see *In re C.B.* at pp. 1128-1138 (dis. opn. of Pollak, J.).) We also agree with the reasoning of *In re J.C.* and will follow it here.

Minor also contends the order denying expungement deprives him of equal protection because he would not have had to provide a DNA sample if Proposition 47 had been in effect at the time he was adjudicated a ward. Our colleagues in Division Three recently rejected a similar contention, stating: " 'Where, as here, a disputed statutory disparity implicates no suspect class or fundamental right, "equal protection of the law is denied only where there is no 'rational relationship between the disparity of treatment and some legitimate governmental purpose.' " ' [Citation.]" (*In re C.H.*, *supra*, 2 Cal.App.5th at p. 1151, review granted.) The court found such a rational relationship: "Preserving the integrity and vitality of the state's DNA database system provides a rational basis to retain the DNA and profiles of offenders who were convicted before enactment of proposition 47, even if they would not be required to provide DNA if convicted after its effective date. It is reasonable to conclude that a more comprehensive database, with samples from more offenders, is a more effective and utilitarian database." (*Id*. at p. 1152.) We agree with this reasoning and adopt it here.

The trial court properly denied Minor's request to expunge his DNA from the state database.

**DISPOSITION**

The order is affirmed.

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Rivera, J.

We concur:

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Reardon, Acting P.J.

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Streeter, J.